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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 **DAVID CODELL PRIDE,**  
12 **CDCR #H-61218,**

13 **Plaintiff,**

14 **vs.**

15 **M. CORREA; et al.,**

16 **Defendants.**  
17

Civil No. 07cv1382 BEN (JMA)

**ORDER GRANTING MOTION  
FOR APPOINTMENT OF PRO  
BONO COUNSEL PURSUANT TO  
28 U.S.C. § 1915(e)(1) AND  
S. D. CAL. GENERAL  
ORDER 596**

**(ECF Doc. No. 97)**

18  
19 Plaintiff, a state prisoner currently incarcerated at Richard J. Donovan Correctional  
20 Facility, in San Diego, California, is proceeding in this matter with a civil rights action  
21 filed pursuant to the Civil Rights Act, 42 U.S.C. § 1983. Plaintiff has been proceeding  
22 *pro se* throughout all proceedings before this Court.<sup>1</sup>

23 On July 16, 2013, the Ninth Circuit Court of Appeals issued both a published  
24 opinion and an unpublished memorandum decision reversing, in part, this Court's Order

25  
26 <sup>1</sup> Plaintiff filed two previous Motions to Appoint Counsel in August 2007, and again in April  
27 2009, but those Motions were denied without prejudice because Plaintiff "demonstrated an ability to  
28 articulate the factual and legal bases of his claim with sufficient clarity" at those stages of the  
proceedings, and thus, could not demonstrate the "exceptional circumstances" required to justify such  
an appointment pursuant to 28 U.S.C. § 1915(e)(1). *See* Aug. 30, 2007 Order (ECF Doc. No. 7) at 2;  
Apr. 30, 2009 Order (ECF Doc. No. 41) at 2 (citing *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.  
1991)).

1 granting summary judgment as to Plaintiff's Eighth Amendment claims for damages  
 2 against Defendants Levin and Correa, as well as its Order dismissing Plaintiff's claims  
 3 for injunctive relief as to both those parties. *See Pride v. Correa*, 719 F.3d 1130 (9th  
 4 Cir. 2013); *Pride v. Correa*, \_\_ Fed. App'x \_\_, No. 10-56036, 2013 WL 3648587 (9th  
 5 Cir. July 16, 2013) (unpublished).

6 On August 27, 2013, Plaintiff filed a Motion for Appointment of Pro Bono  
 7 Counsel pursuant to 28 U.S.C. § 1915(e)(1) and the Court's August 3, 2011 General  
 8 Order 596, adopting a Plan for the Representation of *Pro Se* Litigants in Civil Cases  
 9 (ECF Doc. No. 97). In his Motion and Declaration, Plaintiff claims he remains indigent,<sup>2</sup>  
 10 his claims have merit, and his case is complex requiring "further factual investigation  
 11 and evidentiary presentation at motions or trial." *See* Pl.'s Decl. ¶¶ 2-7. Plaintiff asks  
 12 that the Court appoint Johanna S. Schiavoni—the attorney who was appointed to  
 13 represent him pro bono before the Ninth Circuit, and who is willing to continue  
 14 representation as a member of this Court's Pro Bono Panel—to continue representing  
 15 him pro bono in all further proceedings on remand before this Court. *See* Pl.'s Decl.  
 16 ¶¶ 8-9; Schiavoni Decl. ¶¶ 1-6.

17 Based on these declarations, the procedural posture of this case post-remand, and  
 18 pursuant to this Court's Plan for the Representation of *Pro Se* Litigants in Civil Cases,  
 19 which provides for the appointment of pro bono counsel "for purposes of trial as a matter  
 20 of course in each prisoner civil rights case [which survives] summary judgment," *see*  
 21 S.D. Cal. General Order 596, the Court finds good cause to appoint Johanna S. Schiavoni  
 22 as pro bono counsel for purposes of representing Plaintiff during all further proceedings  
 23 before this Court.

#### 24 **Conclusion and Order**

25 Accordingly, **IT IS ORDERED** that Plaintiff's Motion for Appointment of  
 26 Counsel (ECF No. 97) is **GRANTED** and Johanna S. Schiavoni, of the Law Office of

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27  
 28 <sup>2</sup> Plaintiff was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) on  
 September 21, 2007 in this Court (ECF Doc. No. 7), and again in the Ninth Circuit on March 1, 2011  
 (ECF Doc. No. 90).

1 Johanna S. Schiavoni, 8885 Rio San Diego Drive, Suite 237, San Diego, California,  
2 92108, is **APPOINTED** as Pro Bono Counsel of record for Plaintiff.

3 Pursuant to Civil Local Rule 83.3(g)(2), Pro Bono Counsel shall file, within 14  
4 days of the date of this Order, or as soon as possible, a formal written "Notice of  
5 Substitution of Attorney" signed by both Plaintiff and his newly appointed counsel.  
6 Such substitution shall be considered approved by the Court upon filing, and Pro Bono  
7 Counsel shall thereafter be considered attorney of record for Plaintiff for all further  
8 proceedings before this Court. *See* S.D. CAL. CIVLR 83.3(g)(1), (4).

9 **IT IS FURTHER ORDERED** that the Clerk of Court shall serve Ms. Schiavoni  
10 with a copy of this Order at the address listed above upon filing.

11  
12 DATED: 9/6/13

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14 HON. ROGER T. BENITEZ  
15 United States District Judge  
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